

AMENDED IN SENATE APRIL 29, 2013

AMENDED IN SENATE APRIL 18, 2013

SENATE BILL

No. 531

Introduced by Senator Knight
(Coauthors: Senators Anderson, Berryhill, Emmerson, Fuller,
Gaines, Huff, Nielsen, Walters, and Wyland)
(Coauthor: Assembly Member Wilk)

February 21, 2013

An act to amend Sections 44936, 44938, 44939, 44944, and 44945 of, to add Section 44932.5 to, and to repeal Section 45047 of, the Education Code, relating to school employees.

LEGISLATIVE COUNSEL'S DIGEST

SB 531, as amended, Knight. School employees: discipline: suspension and dismissal.

(1) Existing law prohibits a permanent school employee from being dismissed except for one or more specified causes.

This bill would prohibit a collective bargaining agreement entered into or renewed on or after January 1, 2014, from requiring the removal, after a specified time period, from an employee's record of records pertaining to discipline, complaints, reprimands, or investigations relating to the employee's commission, or potential commission, of one of those specified causes for dismissal.

(2) Existing law authorizes a governing board of a school district to give notice to a permanent employee of its intention to dismiss or suspend him or her for specified causes at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing. Existing law prohibits that notice from being given between May 15th and September 15th in any year.

This bill would remove that prohibition.

(3) Existing law prohibits the governing board of a school district from acting upon any charges of unprofessional conduct, or unsatisfactory performance, unless at least 45, or 90, calendar days, respectively, prior to the date of the filing of the charges the governing board, or its authorized representative, has given the employee written notice, as specified.

This bill would remove those 45-day and 90-day requirements of written notice to the charged employee.

(4) Existing law establishes a Commission on Professional Competence for each dismissal or suspension hearing requested by an employee, consisting of specified members, and requires the proceeding to be conducted in accordance with the Administrative Procedure Act. Existing law deems the decision of the Commission on Professional Competence to be the final decision of the governing board of the school district.

This bill would delete the provisions providing for the establishment of a Commission on Professional Competence, and would instead require the proceedings to be conducted pursuant to the Administrative Procedure Act by an administrative law judge. *The bill would require that the administrative law judge or, for a dismissal proceeding where the charges against the employee do not involve sex, drugs, or violence against children, a panel composed of the judge and 2 certificated employees, acting by a majority vote, propose a decision.* The bill would provide that the decision of the administrative law judge *or panel* would be advisory, and the final decision regarding the discipline of the employee would be determined by action of the governing board of the school district. The bill would provide that an employee requesting a hearing may be placed on administrative leave without pay, and that an employee who is placed on administrative leave would be required to be paid his or her regular salary if he or she furnishes to the school district acceptable security, as specified. By increasing the duties of a governing board in this regard, this bill would impose a state-mandated local program.

(5) Existing law prohibits testimony from being given or evidence being introduced at the hearing relating to matters that occurred more than 4 years prior to the date of the filing of the notice of dismissal or suspension.

This bill would remove that 4-year limitation.

(6) This bill would make additional changes that are nonsubstantive and conforming.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 44932.5 is added to the Education Code,
2 to read:

3 44932.5. A collective bargaining agreement entered into or
4 renewed on or after January 1, 2014, shall not require the removal,
5 after a specified time period, from an employee's record of records
6 pertaining to discipline, complaints, reprimands, or investigations
7 relating to the employee's commission, or potential commission,
8 of a cause listed in Section 44932.

9 SEC. 2. Section 44936 of the Education Code is amended to
10 read:

11 44936. The notice of dismissal or suspension in a proceeding
12 initiated pursuant to Section 44934 shall be in writing and be served
13 upon the employee personally or by United States registered mail
14 addressed to the employee's last known address. A copy of the
15 charges filed, containing the information required by Section 11503
16 of the Government Code, together with a copy of the provisions
17 of this article, shall be attached to the notice.

18 SEC. 3. Section 44938 of the Education Code is amended to
19 read:

20 44938. (a) The governing board of any school district shall
21 not act upon any charges of unprofessional conduct unless the
22 governing board or its authorized representative has given the
23 employee against whom the charge is filed written notice of the
24 unprofessional conduct, specifying the nature of the unprofessional
25 conduct with specific instances of behavior and with particularity
26 as to furnish the employee an opportunity to correct his or her

1 faults and overcome the grounds for the charge. The written notice
2 shall include the evaluation made pursuant to Article 11
3 (commencing with Section 44660) of Chapter 3, if applicable to
4 the employee.

5 (b) The governing board of any school district shall not act upon
6 any charges of unsatisfactory performance unless it acts in
7 accordance with the provisions of paragraph (1) or (2):

8 (1) The governing board or its authorized representative has
9 given the employee against whom the charge is filed written notice
10 of the unsatisfactory performance, specifying the nature of the
11 unsatisfactory performance with specific instances of behavior
12 and with such particularity as to furnish the employee an
13 opportunity to correct his or her faults and overcome the grounds
14 for the charge. The written notice shall include the evaluation made
15 pursuant to Article 11 (commencing with Section 44660) of
16 Chapter 3, if applicable to the employee.

17 (2) The governing board may act during the time period
18 composed of the last one-fourth of the schooldays it has scheduled
19 for purposes of computing apportionments in any fiscal year if,
20 before the beginning of that time period, the governing board or
21 its authorized representative has given the employee against whom
22 the charge is filed written notice of the unsatisfactory performance,
23 specifying the nature of the unsatisfactory performance with
24 specific instances of behavior and with such particularity as to
25 furnish the employee an opportunity to correct his or her faults
26 and overcome the grounds for the charge. The written notice shall
27 include the evaluation made pursuant to Article 11 (commencing
28 with Section 44660) of Chapter 3, if applicable to the employee.

29 (c) (1) “Unprofessional conduct” as used in this section means,
30 and refers to, the unprofessional conduct particularly specified as
31 a cause for dismissal or suspension in Sections 44932 and 44933
32 and does not include any other cause for dismissal specified in
33 Section 44932.

34 (2) “Unsatisfactory performance” as used in this section means,
35 and refers only to, the unsatisfactory performance particularly
36 specified as a cause for dismissal in Section 44932 and does not
37 include any other cause for dismissal specified in Section 44932.

38 SEC. 4. Section 44939 of the Education Code is amended to
39 read:

1 44939. (a) Upon the filing of written charges, duly signed and
2 verified by the person filing them with the governing board of a
3 school district, or upon a written statement of charges formulated
4 by the governing board, charging a permanent employee of the
5 district with immoral conduct, conviction of a felony or of any
6 crime involving moral turpitude, with incompetency due to mental
7 disability, with willful refusal to perform regular assignments
8 without reasonable cause, as prescribed by reasonable rules and
9 regulations of the employing school district, with violation of
10 Section 51530, with knowing membership by the employee in the
11 Communist Party or with violation of any provision in Sections
12 7001 to 7007, inclusive, the governing board may, if it deems such
13 action necessary, immediately suspend the employee from his or
14 her duties and give notice to the employee of his or her suspension,
15 and that 30 days after service of the notice, he or she will be
16 dismissed, unless he or she demands a hearing.

17 (b) If the permanent employee is suspended upon charges of
18 knowing membership by the employee in the Communist Party or
19 for any violation of Section 7001, 7002, 7003, 7006, 7007, or
20 51530, he or she may, within 10 days after service of notice of
21 suspension, file with the governing board a verified denial, in
22 writing, of the charges. A permanent employee who demands a
23 hearing within the 30-day period shall continue to be paid his or
24 her regular salary during the period of suspension and until the
25 final decision of the governing board of the school district, if and
26 during such time as the employee furnishes to the school district
27 a suitable bond, or other security acceptable to the governing board,
28 as a guarantee that the employee will repay to the school district
29 the amount of salary paid during the period of suspension in case
30 the decision of the governing board is that the employee shall be
31 dismissed. If it is determined that the employee may not be
32 dismissed, the school board shall reimburse the employee for the
33 cost of the bond.

34 SEC. 5. Section 44944 of the Education Code is amended to
35 read:

36 44944. (a) (1) In a dismissal or suspension proceeding initiated
37 pursuant to Section 44934, if a hearing is requested by the
38 employee, the hearing shall be commenced within 60 days from
39 the date of the employee's demand for a hearing. The hearing shall
40 be initiated, conducted, and a decision made in accordance with

1 Chapter 5 (commencing with Section 11500) of Part 1 of Division
2 3 of Title 2 of the Government Code. However, the hearing date
3 shall be established after consultation with the employee and the
4 governing board, or their representatives, and the governing board
5 shall have all of the power granted to an agency in that chapter,
6 except that the right of discovery of the parties shall not be limited
7 to those matters set forth in Section 11507.6 of the Government
8 Code but shall include the rights and duties of any party in a civil
9 action brought in a superior court under Title 4 (commencing with
10 Section 2016.010) of Part 4 of the Code of Civil Procedure.
11 Notwithstanding any provision to the contrary, and except for the
12 taking of oral depositions, no discovery shall occur later than 30
13 calendar days after the employee is served with a copy of the
14 accusation pursuant to Section 11505 of the Government Code.
15 In all cases, discovery shall be completed prior to seven calendar
16 days before the date upon which the hearing commences. If any
17 continuance is granted pursuant to Section 11524 of the
18 Government Code, the time limitation for commencement of the
19 hearing as provided in this subdivision shall be extended for a
20 period of time equal to the continuance. However, the extension
21 shall not include that period of time attributable to an unlawful
22 refusal by either party to allow the discovery provided for in this
23 section.

24 (2) If the right of discovery granted under paragraph (1) is
25 denied by either the employee or the governing board, all of the
26 remedies in Chapter 7 (commencing with Section 2023.010) of
27 Title 4 of Part 4 of the Code of Civil Procedure shall be available
28 to the party seeking discovery, and the court of proper jurisdiction
29 to entertain his or her motion shall be the superior court of the
30 county in which the hearing will be held.

31 (3) The time periods in this section and of Chapter 5
32 (commencing with Section 11500) of Part 1 of Division 3 of Title
33 2 of the Government Code and of Title 4 (commencing with
34 Section 2016.010) of Part 4 of the Code of Civil Procedure shall
35 not be applied so as to deny discovery in a hearing conducted
36 pursuant to this section.

37 (4) The superior court of the county in which the hearing will
38 be held may, upon motion of the party seeking discovery, suspend
39 the hearing so as to comply with the requirement of paragraph (3).

1 (5) A witness shall not be permitted to testify at the hearing
2 except upon oath or affirmation.

3 (b) (1) The hearing provided for in this section shall be
4 conducted by an administrative law judge of the Office of
5 Administrative Hearings who shall be responsible for ensuring
6 that the legal rights of the parties are protected at the hearing.

7 (2) *In a dismissal or suspension proceeding conducted pursuant*
8 *to this section not involving allegations of sex, drugs, or violence*
9 *against children, two certificated employees, one selected by the*
10 *governing board and one selected by the employee, shall determine*
11 *the decision in a panel with the administrative law judge. The*
12 *panel shall act by a majority vote.*

13 (c) (1) The administrative law judge, *or the panel provided for*
14 *in paragraph (2) of subdivision (b)*, shall prepare a written decision
15 containing findings of fact, determinations of issues, and a
16 disposition that shall be, solely, one of the following:

17 (A) That the employee should be dismissed.

18 (B) That the employee should be suspended for a specific period
19 of time without pay.

20 (C) That the employee should not be dismissed or suspended.

21 (2) The decision of the administrative law judge, *or the panel*
22 *provided for in paragraph (2) of subdivision (b)*, that the employee
23 should not be dismissed or suspended shall not be based on
24 nonsubstantive procedural errors committed by the school district
25 or governing board unless the errors are prejudicial errors.

26 (3) The administrative law judge, *or the panel provided for in*
27 *paragraph (2) of subdivision (b)*, shall not have the power to
28 dispose of the charge of dismissal by imposing probation or other
29 alternative sanctions. The imposition of suspension pursuant to
30 subparagraph (B) of paragraph (1) shall be available only in a
31 suspension proceeding authorized pursuant to subdivision (b) of
32 Section 44932 or Section 44933.

33 (4) The decision of the administrative law judge, *or the panel*
34 *provided for in paragraph (2) of subdivision (b)*, shall be advisory,
35 and the final decision regarding the discipline of the employee
36 shall be determined by action of the governing board of the school
37 district.

38 (5) The governing board may adopt from time to time rules and
39 procedures not inconsistent with this section as may be necessary
40 to effectuate this section.

1 (6) The governing board and the employee shall have the right
2 to be represented by counsel.

3 (d) (1) If the governing board determines that the employee
4 should be dismissed or suspended, the governing board and the
5 employee shall share equally the expenses of the hearing, including
6 the cost of the administrative law judge *and any panel members*.
7 The Controller shall pay all claims submitted pursuant to this
8 paragraph from the General Fund, and may prescribe reasonable
9 rules, regulations, and forms for the submission of the claims. The
10 employee and the governing board shall pay their own attorney's
11 fees.

12 (2) If the governing board determines that the employee should
13 not be dismissed or suspended, the governing board shall pay the
14 expenses of the hearing, including the cost of the administrative
15 law judge *and any panel members*.

16 (3) If the employee petitions a court of competent jurisdiction
17 for review of the decision of the governing board, the payment of
18 expenses for the administrative law judge, *and any panel members*,
19 required by this subdivision shall not be stayed.

20 (4) If the decision of the governing board is finally reversed or
21 vacated by a court of competent jurisdiction, the employee, having
22 paid a portion of the expenses of the hearing, including the cost
23 of the administrative law judge *and any panel members*, shall be
24 entitled to reimbursement from the governing board for the
25 expenses.

26 (e) The hearing provided for in this section shall be conducted
27 in a place selected by agreement. In the absence of agreement, the
28 place shall be selected by the administrative law judge *or, if*
29 *applicable, the panel provided for in paragraph (2) of subdivision*
30 *(b)*.

31 (f) (1) For the duration of the hearing conducted pursuant to
32 this section, the employee may be placed on administrative leave
33 without pay.

34 (2) If an employee is placed on administrative leave pursuant
35 to this section, the employee shall continue to be paid his or her
36 regular salary during the period of his or her administrative leave
37 of absence if during that time he or she furnishes to the school
38 district a suitable bond or other security acceptable to the governing
39 board, as a guarantee that the school district will be repaid the
40 amount of salary during the employee's leave of absence if, by

1 action of the governing board, a final decision is made to terminate
2 the employee, or the employee fails or refuses to return to service
3 following a decision not to terminate the employee. If the
4 governing board determines that the employee should not be
5 dismissed, the governing board shall reimburse the employee for
6 the cost of the bond upon his or her return to service in the school
7 district.

8 (3) If the employee prevails at the hearing, the administrative
9 law judge, *or the panel provided for in paragraph (2) of subdivision*
10 *(b)*, may recommend a suitable compensatory remedy, including
11 back wages and benefits, which the governing board may adopt if
12 the employee is reinstated. An employee who is reinstated pursuant
13 to this section, either by the governing board or by order of a court
14 of competent jurisdiction, is entitled to reasonable back wages and
15 benefits.

16 SEC. 6. Section 44945 of the Education Code is amended to
17 read:

18 44945. The decision of the governing board may, on petition
19 of the employee, be reviewed by a court of competent jurisdiction
20 in the same manner as a decision made by a hearing officer under
21 Chapter 5 (commencing with Section 11500) of Part 1 of Division
22 3 of Title 2 of the Government Code. The court, on review, shall
23 exercise its independent judgment on the evidence. The proceeding
24 shall be set for hearing at the earliest possible date and shall take
25 precedence over all other cases, except older matters of the same
26 character and matters to which special precedence is given by law.

27 SEC. 7. Section 45047 of the Education Code is repealed.

28 SEC. 8. If the Commission on State Mandates determines that
29 this act contains costs mandated by the state, reimbursement to
30 local agencies and school districts for those costs shall be made
31 pursuant to Part 7 (commencing with Section 17500) of Division
32 4 of Title 2 of the Government Code.